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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,893	12/10/2003	Philippe Dumoux	DUMOUX3	5162
1444	7590	11/18/2005	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWT

**Office Action Summary**

Application No.

10/730,893

Applicant(s)

DUMOUX ET AL.

Examiner

Josiah Cocks

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's amendment filed 9/6/2005 is acknowledged.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-8 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,920,251 to Whitenack et al. ("Whitenack") in view of U.S. Patent No. 1,751,241 to Kincannon ("Kincannon").

Whitenack discloses in Figures 1-10 a steam cooker in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1-8 and 14-20. In particular, Whitenack shows a steam cooker having two cooking elements (50 and 70), each having peripheral walls (see Fig. 5), and a pedestal having a steam production base (10). Within the base (10) is a water tray (30) for providing steam that also functions as a vessel for recovering juices that has the structures recited in applicant's claims. The cooking elements may be arranged in various configurations for stacking in an upright position upon the pedestal base. These cooking elements would be capable of functioning as rice bowls and therefore considered to meet this recitation in the claims (e.g. see applicant's claim 14). The feet (18) or peripheral edges (24) are considered to be the gripping elements recited in applicant's claims 18 and 20.

Whitenack does not disclose that the cooking elements are placed in an inverted position on the pedestal so that the peripheral lateral wall at least partially envelopes the pedestal.

Kincannon teaches a cooking device in the same field of endeavor as applicant's invention and Whitenack. In Kincannon, the cooking device includes multiple cooking elements (29, 33, 35) that maybe be placed in an upright position for cooking food (see Fig. 1) and in a second inverted position for nesting to facilitate storage wherein the cooking elements at least partially envelope a pedestal base (see Fig. 4, page 1, lines 36-40).

Therefore, in regard to claims 1-8 and 14-20, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the steam cooker of Whitenack to incorporate the cooking element nesting taught by Kincannon as this nesting arrangement desirably allows the cooking device to occupy minimum space for transportation or

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storage (see Kincannon, page 1, lines 36-40) and provides a collapsed arrangement for additional cooking techniques (see Kincannon, page 2, lines 100-110).

5. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitenack in view of Kincannon as applied to claim 1 above, and further in view of U.S. Patent No. 691,380 to Hower ("Hower").

Whitenack in view of Kincannon teach all the limitations of claims 9-11 except for the retractable filling device as described.

Hower teaches a steam cooker in the same field of endeavor as applicant's invention and Whitenack. In Hower, the water base includes a filling device (m) that is removable/retractable (see page 2, lines 19-29).

Therefore, in regard to claims 9-11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the steam cooker of Whitenack to incorporate the removable/retractable filling device of Hower for the desirable purpose of providing convenient packing of the steam cooker (see Hower, page 2, lines 20-23).

#### ***Allowable Subject Matter***

6. Claims 12 and 13 are allowed.

#### ***Response to Arguments***

7. Applicant's arguments filed 9/6/2005 have been fully considered but they are not persuasive.

Applicant argues that the nested arrangement of the cooking device of Kincannon described, in particular, in column 1, lines 36-40 and shown in Figure 4 is not the “inverted position” as recited in applicant’s claims. The examiner notes that applicant’s claim 1, as amended, now recites that the cooking elements are “to be nested in one another in an inverted position...” The examiner does not agree with applicant’s assertion. Kincannon clearly discloses that the arrangement shown in particular in Figure 4 is “inverted relation” to that shown in Figure 2 (see page 2, lines 75-76) and describes an aspect of his invention as being arranged to be “nested so as to occupy the minimum space in transportation or storage” (see page 1, lines 36-40). Accordingly, this disclosure would suggest to a person of ordinary skill in the art that the device of Kincannon are inverted in some manner to form a nested arrangement for storage in the same manner both disclosed and claimed by applicant.

Further, even if the cooking elements (29 and 33) of Kincannon are not shown flipped over (or inverted as argued by applicant), as shown in Figure 4 of Kincannon, these elements are clearly capable of being flipped over/inverted and are thus capable of functioning as claimed. It has been held that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114 (citing *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997)). Further, it has been held that apparatus claims cover what a device *is*, and not what it *does*. Id. (citing *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). In this case, as the cooking elements (29 and 33) meet the structural limitations recited and are capable of functioning as recited, applicant’s claims are not patentably distinguished.

Applicant also argues that it is not clear how the cooking elements of Whitenack would be modified to be nested in the manner shown by the cooking elements of Kincannon. In response, the examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case the combined teachings of the references suggest a steam cooking device that includes cooking elements that would be capable of being nested to facilitate transport and storage.

Applicant further argues that Whitenack and Kincannon are not in the same field of endeavor and thus, presumably, are not properly combinable. To this end applicant argues that Whitenack is a steam cooker, a characteristic of such cookers being a perforated bottom element, whereas Kincannon is an electric stove. However, the examiner notes that both references are drawn to electric, countertop cooking devices that include removable cooking elements/side portions. A person of ordinary skill would reasonably consider this inventions in the same field of endeavor and properly combinable.

Applicant has not provided any arguments relating to the additional secondary reference to Hower. Accordingly, it is deemed admitted that Hower shows that for which it has been relied upon.

Accordingly, applicant's claims 1-11 and 14-20 are not considered to patentably distinguish applicant's invention over the prior art.

*Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished




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applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc

November 16, 2005



JOSIAH COCKS  
PRIMARY EXAMINER  
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